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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2389**

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**Introduced by Assembly Member Gaines**

February 19, 2010

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An act to add Section 1367.49 to the Health and Safety Code, and to add Section 10133.64 to the Insurance Code, relating to health care coverage.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2389, as amended, Gaines. Health care coverage: health facilities: cost and quality information.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits a contract between a plan or insurer and a health care provider from containing certain terms.

This bill would prohibit a contract by or on behalf of a plan or insurer and a health care facility, as defined, to provide inpatient hospital services or ambulatory care services to subscribers and enrollees of the

plan or policyholders and insureds of the insurer from containing a provision that restricts the ability of the plan or insurer to furnish information to subscribers or enrollees of the plan or policyholders or insureds of the insurer concerning the cost range of procedures at the facility or the quality of services performed by the facility. ~~The bill would require that, provided that, among other requirements, the cost information be is limited to certain elective, uncomplicated procedures, and be displayed in a specified manner and would prohibit a health care service plan from disclosing negotiated capitation rates or other prepaid arrangements to enrollees or subscribers in either the cost or quality information, except as specified. The bill would require a plan or insurer that furnishes the cost or quality information to the plan or insurer also disclose discloses the location of its facility cost ranges and quality measurements to subscribers, enrollees, policyholders, and insureds, and to make and makes specified disclosures regarding those measurements and the cost information provided. The bill would require plans and insurers to provide, and the plan or insurer provides affected facilities an opportunity to review the information prior to furnishing it to subscribers, enrollees, policyholders, or insureds, as specified, and would also, among other things, require, if the information is data developed and compiled by the plan or insurer, that the information be based on specified guidelines and be updated regularly, as specified. The bill would make a contractual provision inconsistent with the bill's requirements void and unenforceable.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1367.49 is added to the Health and Safety  
2     Code, to read:  
3     1367.49. (a) A contract issued, amended, renewed, or delivered  
4     on or after January 1, 2011, by or on behalf of a health care service  
5     plan and a health care facility to provide inpatient hospital services  
6     or ambulatory care services to subscribers and enrollees of the  
7     plan shall not contain any provision that restricts the ability of the  
8     health care service plan to furnish information to subscribers or  
9     enrollees of the plan concerning the cost range of procedures at  
10    the facility or the quality of services performed by the ~~facility.~~  
11    *facility, provided that the following requirements are satisfied:*

~~(b)~~

~~(1) Information on the cost range of procedures at a health care facility furnished by a plan to enrollees or subscribers shall be displayed as an episode is displayed as an episode of care, unless an episode of care is not applicable, and applicable. This information may include, but shall not be limited to, applicable diagnostic tests, prescription drugs, hospital days, and medical supplies that are associated with a typical procedure or illness. The information shall be limited to the cost range of elective, uncomplicated procedures performed on patients without malignancy or comorbidity, with a length of stay consistent with the diagnosis-related group assignment.~~

~~(c) A health care service plan shall~~

~~(2) The plan does not disclose negotiated capitation rates or other prepaid arrangements in the information described in subdivision (a) that is furnished to enrollees or subscribers. However, if the health care service plan includes in that information allocated capitation payments to a health care facility for an episode of care, the plan and the facility shall consult on an appropriate and reasonable methodology formula.~~

~~(d)~~

~~(3) If the information proposed to be furnished to enrollees and subscribers on the quality of services performed by a health care facility is quality of care data that the plan has developed and compiled, all of the following requirements shall be are satisfied:~~

~~(1) The information shall be based on nationally recognized evidence or consensus-based clinical~~

~~(A) The information is based on consensus-based, or nationally recognized evidence-based, clinical recommendations or guidelines. When available, a plan shall use measures endorsed by the National Quality Forum or other entities nationally recognized for quality or performance review.~~

~~(2) The plan shall utilize~~

~~(B) The plan utilizes appropriate risk adjustment factors to account for different characteristics of the population, such as case mix, severity of patient's condition, comorbidities, outlier episodes, and other factors to account for differences in the use of health care resources among health care facilities.~~

~~(3)~~

1 (C) The information, and the data used as the basis for that  
2 information, ~~shall be~~ *are* updated regularly, and no less than  
3 annually.

4 ~~(4)~~

5 (D) If the health care service plan is evaluating quality  
6 measurements for which it is also furnishing the cost range of  
7 procedures to its enrollees or subscribers, it ~~shall link~~ *links* the two  
8 together for comparison purposes when appropriate.

9 ~~(e) A health care service plan shall, prior to furnishing the~~  
10 ~~information described in subdivision (a) to its enrollees or~~  
11 ~~subscribers, provide all of the following to the affected health care~~  
12 ~~facility:~~

13 *(4) The plan provides all of the following to the affected health*  
14 *care facility prior to furnishing the information to enrollees or*  
15 *subscribers:*

16 ~~(1)~~

17 (A) At least 45-days written notice to review the information.

18 ~~(2)~~

19 (B) A summary of the criteria and methodology used in the  
20 development and evaluation of cost range and quality  
21 measurements. This summary shall be sufficiently detailed and  
22 reasonably understandable to allow the facility to verify the data  
23 against its own records.

24 ~~(3)~~

25 (C) An explanation to the facility that it has the right to correct  
26 errors and seek review of the data used to measure the quality of  
27 services provided at the facility and to provide supplemental  
28 information to the plan if the facility finds discrepancies in the  
29 data or cost range criteria used by the plan.

30 ~~(4)~~

31 (D) A reasonable, prompt, and transparent appeal process. If  
32 the facility makes an appeal prior to the expiration of the time  
33 period provided under ~~paragraph (1) subparagraph (A)~~, the health  
34 care service plan shall make no material changes to its current  
35 information about the facility until the appeal is completed.

36 ~~(5)~~

37 (E) Notice of, and an annual update of, the information furnished  
38 to enrollees or subscribers on the cost range of procedures at the  
39 facility. A plan may satisfy this requirement by providing an  
40 electronic copy to the facility or by providing the facility with

1 access to the plan's cost information through an Internet Web site  
2 or electronic portal made available by the plan.

3 ~~(f) A health care service plan that furnishes information~~  
4 ~~concerning the cost range of procedures at a health care facility or~~  
5 ~~the quality of services provided by the facility to its subscribers~~  
6 ~~or enrollees shall also disclose the~~

7 *(5) The plan also discloses the following to its subscribers or*  
8 *enrollees:*

9 ~~(1)~~

10 (A) Where the plan's facility cost ranges and quality  
11 measurements can be found.

12 ~~(2)~~

13 (B) That facility cost ranges and quality measurements provided  
14 by the plan are only a guide to choosing a facility, that enrollees  
15 or subscribers should confer with their existing facility before  
16 making a decision, and that these ranges and measurements have  
17 a risk of error and should not be the sole basis for selecting a  
18 facility.

19 ~~(3)~~

20 (C) Information explaining the facility quality measurement  
21 process, including the basis upon which quality is measured and  
22 any limitation of the data used.

23 ~~(4)~~

24 (D) Reasonable details on the factors and criteria used by the  
25 facility quality measurement system, including whether severity  
26 cost adjustments have been utilized.

27 ~~(5)~~

28 (E) How an enrollee or subscriber may register a complaint  
29 about, or provide feedback on, the quality measurement system or  
30 the cost range information provided by the plan.

31 ~~(g) Any contractual~~

32 *(b) Any contractual provision inconsistent with this section shall*  
33 *be void and unenforceable.*

34 ~~(h)~~

35 (c) For purposes of this section, "health care facility" means a  
36 health facility defined in subdivision (a), (b), or (f) of Section 1250.

37 ~~(i)~~

38 (d) Section 1390 shall not apply for purposes of this section.

39 SEC. 2. Section 10133.64 is added to the Insurance Code, to  
40 read:

1 10133.64. (a) A contract issued, amended, renewed, or  
2 delivered on or after January 1, 2011, by or on behalf of a health  
3 insurer and a health care facility to provide inpatient hospital  
4 services or ambulatory care services to policyholders and insureds  
5 of the insurer shall not contain any provision that restricts the  
6 ability of the health insurer to furnish information to policyholders  
7 or insureds concerning the cost range of procedures at the health  
8 care facility or the quality of services provided by the facility.  
9 *facility, provided that the following requirements are met:*

10 ~~(b)~~

11 ~~(1) Information on the cost range of procedures at a health care~~  
12 ~~facility furnished by an insurer to policyholders or insureds shall~~  
13 ~~be displayed as an episode of care, unless an episode of care is not applicable, and applicable. This information~~  
14 ~~may include, but shall not be limited to, applicable diagnostic tests,~~  
15 ~~prescription drugs, hospital days, and medical supplies that are~~  
16 ~~associated with a typical procedure or illness. The information~~  
17 ~~shall be limited to the cost range of elective, uncomplicated~~  
18 ~~procedures performed on patients without malignancy or~~  
19 ~~comorbidity, with a length of stay consistent with the~~  
20 ~~diagnosis-related group assignment.~~

21 ~~(e)~~

22 ~~(2) If the information proposed to be furnished to policyholders~~  
23 ~~or insureds on the quality of services performed by a health care~~  
24 ~~facility is quality of care data that the insurer has developed and~~  
25 ~~compiled, all of the following requirements shall be are satisfied:~~

26 ~~(1) The information shall be based on nationally recognized~~  
27 ~~evidence- or consensus-based clinical~~

28 ~~(A) The information is based on consensus-based, or nationally~~  
29 ~~recognized evidence-based, clinical recommendations or~~  
30 ~~guidelines. When available, an insurer shall use measures endorsed~~  
31 ~~by the National Quality Forum or other entities nationally~~  
32 ~~recognized for quality or performance review.~~

33 ~~(2) The insurer shall utilize~~

34 ~~(B) The insurer utilizes appropriate risk adjustment factors to~~  
35 ~~account for different characteristics of the population, such as case~~  
36 ~~mix, severity of patient's condition, comorbidities, outlier episodes,~~  
37 ~~and other factors to account for differences in the use of health~~  
38 ~~care resources among health care facilities.~~

39 ~~(3)~~

1 (C) The information, and the data used as the basis for that  
2 information, ~~shall be~~ *are* updated regularly, but no less than  
3 annually.

4 ~~(4)~~

5 (D) If the health insurer is evaluating quality measurements for  
6 which it is also furnishing the cost range of procedures to its  
7 policyholders or insureds, it ~~shall link~~ *links* the two together for  
8 comparison purposes when appropriate.

9 ~~(d) A health insurer shall, prior to furnishing the information~~  
10 ~~described in subdivision (a) to its policyholders or insureds, provide~~  
11 ~~all of the following to the affected health care facility:~~

12 *(3) The insurer provides all of the following to the affected*  
13 *health care facility prior to furnishing the information to*  
14 *policyholders or insureds:*

15 ~~(1)~~

16 (A) At least 45-days written notice to review the information.

17 ~~(2)~~

18 (B) A summary of the criteria and methodology used in the  
19 development and evaluation of cost range and quality  
20 measurements. This summary shall be sufficiently detailed and  
21 reasonably understandable to allow the facility to verify the data  
22 against its own records.

23 ~~(3)~~

24 (C) An explanation to the facility that it has the right to correct  
25 errors and seek review of the data used to measure the quality of  
26 services provided at the facility and to provide supplemental  
27 information to the insurer if the facility finds discrepancies in the  
28 data or cost range criteria used by the insurer.

29 ~~(4)~~

30 (D) A reasonable, prompt, and transparent appeal process. If  
31 the facility makes an appeal prior to the expiration of the time  
32 period provided under ~~paragraph (1) subparagraph (A)~~, the health  
33 insurer shall make no material changes to its current information  
34 about the facility until the appeal is completed.

35 ~~(5)~~

36 (E) Notice of, and an annual update of, the information furnished  
37 to policyholders or insureds on the cost range of procedures at the  
38 facility. A health insurer may satisfy this requirement by providing  
39 an electronic copy to the facility or by providing the facility with

1 access to the insurer's cost information through an Internet Web  
2 site or electronic portal made available by the insurer.

3 ~~(e) A health insurer that furnishes information concerning the~~  
4 ~~cost range of procedures at a health care facility or the quality of~~  
5 ~~services provided by the facility to its policyholders or insureds~~  
6 ~~shall also disclose the following to its policyholders or insureds:~~

7 *(4) The insurer also discloses the following to its policyholders*  
8 *or insureds:*

9 ~~(1)~~

10 (A) Where the insurer's facility cost ranges and quality  
11 measurements can be found.

12 ~~(2)~~

13 (B) That facility cost ranges and quality measurements provided  
14 by the insurer are only a guide to choosing a facility, that  
15 policyholders or insureds should confer with their existing facility  
16 before making a decision, and that these ranges and measurements  
17 have a risk of error and should not be the sole basis for selecting  
18 a facility.

19 ~~(3)~~

20 (C) Information explaining the facility quality measurement  
21 process, including the basis upon which quality is measured and  
22 any limitation of the data used.

23 ~~(4)~~

24 (D) Reasonable details on the factors and criteria used by the  
25 facility quality measurement system, including whether severity  
26 cost adjustments have been utilized.

27 ~~(5)~~

28 (E) How a policyholder or insured may register a complaint  
29 about, or provide feedback on, the quality measurement system or  
30 the cost range information provided by the insurer.

31 ~~(f) Any contractual~~

32 *(b) Any contractual* provision inconsistent with this section shall  
33 be void and unenforceable.

34 ~~(g)~~

35 (c) For purposes of this section, "health care facility" means a  
36 health facility defined in subdivision (a), (b), or (f) of Section 1250  
37 of the Health and Safety Code.